

Amendment No. 1 to HB2789

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AMEND Senate Bill No. 2919

House Bill No. 2789*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 4, is amended by creating the following new, appropriately designated part:

9-4-5601. This part shall be known and may be cited as the "Tennessee Governmental Accountability Act of 2002."

9-4-5602. The general assembly finds and declares that accountability in program performance is vital to effective and efficient delivery of governmental services, and to maintain public confidence and trust in government. To maximize accountability, a system of strategic planning, performance-based budgeting, and performance audits should be implemented to measure the effectiveness and efficiency of governmental services. It is of paramount public importance that this system encourages full and candid participation by all agencies of state government. This system will generate information necessary for the public to be informed fully and for the general assembly to make meaningful decisions about the allocation of scarce resources in meeting vital needs.

9-4-5603. The strategic planning, performance-based budgeting, and performance review requirements of this part shall apply to all state departments, agencies, boards and commissions.

9-4-5604. For purposes of this part, the following terms shall have the following meaning unless the context requires otherwise:

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(1) "Agency" or "state agency" means any unit of organization of the executive department, including any official, officer, department, board, commission, division, bureau, section, district, office, authority, committee, or council or any other unit of government, however designated, including, without limitation, higher education. For purposes of this act, "agency" or "state agency" shall not include the judicial department or the legislative department.

(2) "Baseline data" means indicators of a state agency's current performance level, pursuant to guidelines established jointly by the executive office of the governor and the commission, subject to approval by the general assembly.

(3) "Commission" means the commission on governmental accountability established in this part.

(4) "Outcome" means an indicator of the actual impact or public benefit of a program.

(5) "Output" means the actual service or product delivered by a state agency.

(6) "Performance-based program budget" means a budget that incorporates approved programs and performance measures.

(7) "Performance measure" means a quantitative or qualitative indicator used to assess state agency performance.

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(8) "Program" means a set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives.

(9) "Standard" means the level of performance of an outcome or output.

9-4-5605.

(a) A commission on governmental accountability is hereby established consisting of the comptroller of the treasury, the director of the office of legislative budget analysis, the director of the fiscal review committee, and the commissioner of finance and administration. The members of the commission shall elect a chairperson to serve for a one (1) year term. The chair of the commission shall rotate and the person holding each office represented on the commission shall serve as chairperson once during each four (4) year period.

(b)

(1) The commission shall perform duties assigned to it under this part. The members of the commission shall utilize their existing staff in performing such duties.

(2) The executive office of the governor and state agencies shall perform duties assigned to them under this part using existing resources. It is the legislative intent that the requirements of the Tennessee Governmental Accountability Act of 2002 constitute a new approach to the budgeting, planning, and

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accountability process, rather than an addition to existing procedures.

(c) The commission shall have authority to employ outside consultants and entities with expertise in governmental finance and performance review for the purpose of conducting performance reviews or otherwise fulfilling its duties under this part. The performance reviews required under this part may be conducted by a private entity selected by the commission subject to the competitive bidding requirements of title 4, chapter 12.

9-4-5606.

(a) The executive office of the governor and the commission, after discussion with the senate and house finance, ways and means committees and the appropriate substantive committees, shall jointly develop instructions for the development of performance measures for each program on the list approved as provided in Section 9-4-5103(b) and shall submit such instructions to the state agencies prior to December 1 of the fiscal year preceding the fiscal year in which a state agency is required to submit a performance-based program budget request.

(b) Prior to June 1 each year, each state agency subject to performance-based budgeting is required to submit to the executive office of the governor and the commission a strategic plan and proposed

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performance measures for each program on the approved list required pursuant to Section 9-4-5103(b). Such state agencies shall also identify the outputs produced by each approved program, the outcomes resulting from each approved program, and baseline data associated with each performance measure. Performance measures shall be reviewed by the executive office of the governor and the commission, after discussion with the senate and house finance, ways and means committees, the appropriate standing committees, and the commission, revised as necessary, and approved or disapproved within thirty (30) days of receipt.

(c) Notwithstanding the programs, performance measures, and standards requested in the budget document submitted pursuant to Section 9-4-5106, the general assembly shall have final approval of all strategic plans, performance measures and standards through the appropriations act and shall have discretion in the appropriations act, consistent with otherwise applicable requirements of general law and the constitution of Tennessee, to increase, reduce, eliminate, or otherwise alter the appropriation to a state agency based upon such agency's compliance with its performance measures and standards.

(d) Each state agency subject to performance-based budgeting shall submit documentation to the executive office of the governor and the commission regarding the validity, reliability, and appropriateness of each performance measure. In addition, each state agency shall indicate how

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the strategic plan and the performance measures are used in management decision-making and other agency processes.

(e)

(1) Annually, no later than forty-five (45) days after the general appropriations act becomes law, state agencies may submit to the executive office of the governor and the commission any adjustments to their performance standards based on the amounts appropriated for each program by the general assembly.

(2) At any time during the fiscal year in which a state agency, by restraining order, injunction, consent decree, settlement, or any final judgment of a court of competent jurisdiction, is required to modify its operations, or the state agency receives additional federal or other funding, the state agency may submit to the executive office of the governor and the commission any adjustments to its performance standards required by such court order, consent decree, settlement, or additional funding.

(3) When such adjustment is made pursuant to subdivisions (1) and (2), all performance standards, including any adjustments made, shall be submitted to and reviewed and revised as necessary jointly by the executive office of the governor and the commission. The executive office of the governor and the

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commission shall jointly maintain the official record of adjustments to the performance standards.

(f) A state agency subject to performance-based budgeting shall not have the authority to amend or establish programs or performance measures but may propose a revision to the list of its approved programs or performance measures.

9-4-5607. The commission shall develop a schedule for including state agencies within performance-based budgeting and review, beginning with three (3) agencies selected for fiscal year 2003-2004. All agencies of state government shall be included in performance-based budgeting and review not later than fiscal year 2010-2011.

9-4-5608.

(a) The commission shall at least annually, and more frequently if necessary, evaluate each state agency's compliance with its strategic plan and performance-based measures and shall report to the senate and house finance, ways and means committees, the appropriate substantive committees, and the executive office of the governor concerning each agency's compliance with its strategic plan and performance-based measures. Such reports shall include comments from the state agency. Such reports shall be timely furnished, and updated if necessary, for use by the senate and house finance, ways and means committees in consideration of the appropriations act.

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(b) The commission's report as to each state agency's compliance may contain recommendations to the senate and house finance, ways and means committees concerning the following non-exhaustive performance measure incentives or disincentives for potential inclusion in the appropriations bill:

(1) Incentives may include, but are not limited to:

(A) Additional flexibility in budget management;

(B) Additional flexibility in salary rate and position management, notwithstanding the provisions of Title 8, Chapter 23, or any other law to the contrary;

(C) Retention of up to fifty percent (50%) of unexpended and unencumbered balances of appropriations, excluding special categories and grants and aids, that may be used for non-recurring purposes including, but not limited to, lump-sum bonuses, employee training, or productivity enhancements, including technology and other improvements; and

(D) Additional funds to be used for, but not limited to, lump-sum bonuses, employee training, or productivity enhancements, including technology and other improvements.

(2) Disincentives may include, but are not limited to:

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(A) Mandatory quarterly reports to the executive office of the governor and the commission, posted on the state of Tennessee's website, on the agency's progress in meeting performance standards;

(B) Mandatory quarterly appearances before the general assembly, the commission, the governor, or the governor and cabinet to report on the agency's progress in meeting performance standards;

(C) Elimination or restructuring of the program, which may include, but not be limited to, transfer of the program or outsourcing all or a portion of the program;

(D) Reduction of total positions for a program;

(E) Restriction on or reduction of the appropriation for the program; and

(F) Reduction of managerial salaries, notwithstanding the requirements of Title 8, Chapter 23, or any other law to the contrary.

9-4-5609.

(a) In the fiscal year beginning July 1, 2002, and each year thereafter, each state agency shall prepare a strategic plan for delivering the services and achieving the objectives required of it under the laws of the state of Tennessee and any federal program in which the state of

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Tennessee participates. The strategic plan shall include, but not be limited to, the following matters:

- (1) The statutory and constitutional objectives of the entity;
- (2) Identification of the scope of services the entity is required to provide and the best means of providing such services;
- (3) Identification of any optional services the entity may provide, resources permitting and the best means of providing such services;
- (4) Means of maximizing federal or other non-state sources of revenue;
- (5) Means of avoiding unnecessary costs and expenditures;
- (6) Means of addressing any change in objectives or services since the previous strategic plan;
- (7) Obstacles to meeting objectives and delivering services;
- (8) Means of overcoming such obstacles; and
- (9) Future challenges and opportunities.

(b)

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(A) Each state agency shall submit its draft plan to the commissioner of the department, who shall prepare a single comprehensive plan for each department.

Independent agencies, boards and commissions shall submit their draft plans to the commissioner of finance and administration.

(B) The comptroller of the treasury, state treasurer, secretary of state, and attorney general shall prepare their plans separately.

(C) The administrative office of the courts shall prepare a plan on behalf of the court system. Such plan shall include the district attorneys general conference and the district public defenders conference.

(D) The joint legislative services committee shall prepare a plan on behalf of the legislative department.

(2) Each strategic plan shall be submitted to the general assembly and the governor not later than September 1 of each year and shall cover the fiscal year in effect as of the date of the report.

9-4-5610.

(a) Each state agency shall be subject to a performance review of its activities as determined by the commission.

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(b) The performance review shall include such matters as the entity performing the review deems appropriate related to the manner in which the entity is delivering its services and achieving its objectives, including but not limited to:

(1) The efficient use of all state and federal resources and user fees;

(2) Additional non-state revenue or cost savings that the entity could achieve; and

(3) The extent to which the entity has achieved the objectives of its strategic plan.

(c) Each entity subject to a performance review shall cooperate fully with the performance reviewers and shall timely provide all relevant documents and requested information. If any entity refuses to provide any requested documents or information, the performance reviewers shall include such refusal in its report, as well as the reasons given by the entity for not furnishing the documents or information.

9-4-5611.

(a) Notwithstanding the provisions of subsection (c) of this section, to achieve full and candid participation in the planning and audit process, no strategic plan or performance review, or any information generated solely for or by any such plan or review, shall be admissible in any judicial proceeding or administrative hearing.

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(b) Any documents or information referenced in any such plan or audit that exist independent of the planning and review process shall not be subject to the prohibition of subsection (a). The admissibility of such documents and information shall be determined in accordance with the rules of evidence and standards otherwise applicable to any such proceeding.

(c) Each strategic plan and performance review shall be a public record under the provisions of Title 10, Chapter 7.

9-4-5612. Not later than June 30, 2003, the director of the office of legislative administration shall develop and submit to the joint legislative services committee proposed instructions for the development of performance measures for the legislative department in accordance with the criteria established in Section 9-4-5103(b)(2). The joint legislative services committee shall review such proposed instructions and may revise or amend the proposed instructions. After approval of the proposed instructions, the joint legislative services committee shall forward such proposed instructions to the commission for review and comment. The commission shall review such proposed instructions and forward comments to the joint legislative services committee and the director of the office of legislative administration. After reviewing such comments, the joint legislative services committee shall adopt final instructions for the development of such performance measures.

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9-4-5613. Not later than June 30, 2003, the judicial department, acting through the administrative office of the courts, shall identify and submit to the general assembly a list of programs that the administrative office of the courts recommends could operate under a performance-based program budget under the criteria established in Section 9-4-5103(b)(2). By January 1, 2004, the administrative office of the courts shall submit to the general assembly performance measures and standards for such programs. Notwithstanding any other provisions of this act, the general assembly, in consultation with the judicial branch, may develop statutory procedures for evaluating the effectiveness of such programs.

9-4-5614. Notwithstanding any law to the contrary, no funds shall be transferred within or between state agencies or departments to compensate, directly or indirectly, for any incentives or disincentives in the appropriations bill, or any other funding increase or reduction, relative to performance-based budgeting.

SECTION 2. Tennessee Code Annotated, Section 9-4-5103, is amended by deleting that section in its entirety and by substituting instead the following new language:

(a) On or before December 1 of each year, all departments, offices, and agencies of the state government shall prepare, in a written or electronic format determined by the commissioner of finance and administration, and submit to such officer, estimates of their expenditure requirements for the next fiscal year

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compared with the corresponding figures of the last completed fiscal year and estimated figures for the current fiscal year. The expenditure estimates shall be classified to set forth the data by funds, organization units, character and objects of expenditure; the organization units may be subclassified by function and activities, or in any other manner at the discretion of the commissioner. Any state agency subject to performance-based budgeting requirements under subsection (b) shall include with its submission a listing of its proposed state agency programs as approved by the governor under subsection (b).

(b)

(1) Prior to October 15 preceding the fiscal year in which a state agency is required to submit a performance-based program budget request, such state agency shall identify and submit to the executive office of the governor a proposed strategic plan and a list of proposed state agency programs. Such identification shall be conducted after discussion with the commission on governmental accountability. The governor shall, after discussion with the senate and house finance, ways and means committees and the commission on governmental accountability, review the plan and list and make any changes or modifications within thirty (30) days of receipt. The plan and list, as approved by the governor, shall be used in complying with the requirements of subsection (a).

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(2) The following documentation shall accompany the list of proposed programs submitted by the state agency:

(A) Identification of the customers, clients, and users of each program;

(B) The purpose of each program or the benefit derived by the customers, clients, and users of the program;

(C) Direct and indirect costs of each program;

(D) All sources of funding for each program, broken down into federal dollars, state tax revenue, fees, and other specifically identified sources;

(E) Information on fees collected and the adequacy of those fees in funding each program for which the fees are collected;

(F) An assessment of whether each program is conducive to performance-based budgeting; and

(G) An assessment of the time needed to develop meaningful performance measures for each program.

SECTION 3. Tennessee Code Annotated, Section 9-4-5106, is amended by adding the following new subsection:

(c) The budget document shall include a performance-based program budget for all state agencies subject to performance-based budgeting.

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SECTION 4. Tennessee Code Annotated, Section 9-4-5108, is amended by adding the following new subsections:

(e) For programs operating under performance-based program budgets, the appropriations bill shall contain summary information that covers specific appropriations and summarizes programs and performance.

(f) Notwithstanding the provisions of Title 8, Chapter 23, or any other law to the contrary, the appropriations bill may specify incentives or disincentives relative to performance-based budgeting as recommended by the commission on governmental accountability. The general assembly is not limited to the recommendations of the commission in incorporating such incentives and disincentives in the appropriations bill.

SECTION 5. This act shall not take effect unless funding is specifically provided in an appropriations act.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.